

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

DAVID MEJIA,
TDCJ # 863486,

Petitioner,

V.

WILLIAM STEPHENS, Director,
Texas Department of Criminal Justice -
Correctional Institutions Division,

Respondent.

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CIVIL ACTION NO. 6:13-CV-47

ORDER ADOPTING REPORT AND RECOMMENDATION

In a Report and Recommendation [Doc. # 22] (“R&R”) dated June 30, 2015, Magistrate Judge John Froeschner recommended that Respondent’s Motion for Summary Judgment [Doc. # 14] be denied without prejudice. Respondent filed an Objection [Doc. # 23] to the R&R, and Petitioner David Mejia filed a response [Doc. # 25].

Respondent correctly argues in his Objection that the deferential standards of the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) and 28 U.S.C. § 2254 apply to this case. The Magistrate Judge did not expressly apply these standards in the R&R. However, this Court notes that on June 1, 2015, the Magistrate Judge, after his ruling denying summary judgment without prejudice appointed

counsel for Petitioner. This appointment was made after Petitioner *pro se* filed summary judgment briefing. Petitioner's counsel therefore has not had the opportunity to brief the impact of the § 2254 standards. Moreover, Judge Froeschner denied Respondent's summary judgment motion *without prejudice*, thereby allowing these issues to be revisited after appropriate development of the facts by the parties with the aid of counsel for both parties.

Accordingly, after *de novo* review, it is hereby

ORDERED that the Report and Recommendation [Doc. # 22] of Magistrate Judge Froeschner is **ADOPTED**. Respondent's Motion for Summary Judgment [Doc. # 14] is **DENIED without prejudice**.

SIGNED at Houston, Texas, this 18th day of **August, 2015**.



NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE